JERROLD OPPENHEIM
57 MIDDLE STREET
GLOUCESTER, MASSACHUSETTS 01930-5736 USA
+1 (978) 283-0897
JerroldOpp@DemocracyAndRegulation.com
www.DemocracyAndRegulation.com

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Lauren Farrell
Executive Office of Energy and Environmental Affairs
100 Cambridge St., Ninth floor
Boston, MASS. 02114
Via e-mail: Lauren.Farrell@state.ma.us

RE: Draft Report of Energy Policy Review Commission

This is the Comment of the low-income weatherization and fuel assistance program network (the Network) and its constituent agencies. We appreciate this opportunity to comment on important issues of the Commonwealth's energy policy.

G.L. c. 25, sec. 19(c) (Green Communities Act, St. 2008, c. 169, sec. 11) provides that "The low-income residential demand side management and education programs shall be implemented through the low-income weatherization and fuel assistance program network and shall be coordinated with all electric and gas distribution companies in the commonwealth with the objective of standardizing implementation." The Network is the organization of agencies that make up the low-income weatherization and fuel assistance program network that implement programs under the Act, as well as the federal fuel assistance program administered by the Department of Housing and Community Development. The Network includes the agencies that implement these programs across the Commonwealth. Members of the Network also install renewable energy measures, counsel customers of the Companies about rates and payment options, and arrange rate payment assistance (including fuel assistance, arrearage management, and other forms of assistance) for their clients as customers of utilities and energy companies.

As the Report demonstrates. Massachusetts has one of the most effective energy efficiency programs in the world because it is designed and closely overseen to be comprehensive, high quality, and delivered at reasonable cost.

Thus the energy efficiency programs are based on aggressive savings goals, comprehensive energy auditing, a wide array of cost-effective measures, rigorous training requirements and quality control inspections, strict consumer protections, and vigourous control over costs (*e.g.*, by means of fixed low contractor prices and rigourous inspection). It should be noted that the most effective energy efficiency program is not likely to be the cheapest, since high quality and a deep, comprehensive approach by definition require higher than average costs; therefore the cost goal is properly least-cost for the quality and comprehensiveness required.

We limit our Comments to correcting the following factual matters:

1. "(1997 Restructuring Act), required formerly vertically integrated electric utilities to divest themselves of their ownership of their generation units." (p.8) -- The Restructuring Act actually provided authority and incentives for utilities to divest but did not (and probably could not constitutionally) require divestiture. The relevant sections of the Restructuring Act are set out below; they clearly provide for the utilities to choose between keeping or selling their generation units.

2. "Since restructuring in 1996..." (top of p. 10) -- Restructuring was enacted in 1997 for effect in 1998.

3. "investment owned utilities (IOUs)" (p. 10) -- IOUs in an acronym commonly used to mean Investor-Owned Utilities.

4. Footnote 3 (p. 10), describing the funding sources for GCA activities is incomplete because it omits the utility ratepayer funding for energy efficiency that is over and above the system benefit charge (which mostly funds energy efficiency). If the footnote is meant to exclude energy efficiency, it should more clearly do so.

5. There is an implication that the Commission endorses a benefit:cost analysis of renewables performed by one commissioner (p. 27, point 4). The implication is not so, although there is general support for renewable energy which we share.

6. The reference to "environmental benefits that impact citizens of the Commonwealth through the various programs implemented under the Mass Save ® aegis" (p. 29) should note that only those environmental benefits that affect ratepayers, including program participants but not all citizens, are accounted for in the MassSave benefit:cost analysis.

7. A recommended metric is that "measurement should include a cost per unit of GHG ton avoided of the various energy efficiency efforts" (p.31). However, there is a question of whether energy efficiency costs in such an analysis

should be allocated to GHG reduction at all (perhaps with the exception of avoided GHG compliance costs) since the expenditures are robustly cost-effective on other grounds.

8. Another recommended metric is "Amount of taxpayer and/or ratepayer support that the industry receives, so that a cost per job created metric can be calculated and compared with other industries receiving similar support." (p. 35) With respect to energy efficiency, there is again a question of whether any costs should be allocated to job development at all since energy efficiency expenditures are robustly cost-effective on other grounds.

9. There is an implication that the Commission endorses "An analysis of the 2012 Mass Save ® Home Energy Services program [that] was compiled individually by a Commission member. See Appendix 4, Issue 4." (p. 37, point 1) The implication is not so. The analysis, including its assertions, implied inferences, and conclusions, have not been reviewed or verified by the Commission or, so far as we aware, anyone else.

10. "The DOER, in consultation with the AGO, is currently reviewing this topic [market rules, including bulk reliability, capacity constraints, dispatch of generation and available resource mix] and plans to release a report." (p. 38) There should be no inference that there is a Commission consensus, or even involvement, in the conclusions of the referenced report.

11. Please note "LEAN" is misspelled on p. 52.

Please contact the undersigned if there are any questions about this filing.

Respectfully submitted,

The Low-income Weatherization and Fuel Assistance Program Network, including its member agencies,

By their attorney,

Jerrold Oppenheim, Esq.
57 Middle Street
Gloucester, Mass. 01930
978-283-0897
JerroldOpp@DemocracyAndRegulation.com

RESTRUCTURING ACT EXCERPT

SECTION 193. Said chapter 164 is hereby further amended by inserting after section 1 the following eight sections:-

Section 1A. (a) The department is hereby authorized and directed to require electric companies organized pursuant to the provisions of this chapter to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section.

On or before January 1, 1998, each electric company organized under the provisions of this chapter, which has not filed a plan prior to the enactment of this section, shall file with the department a detailed plan for restructuring its operations to allow for the introduction of retail competition in generation supply in accordance with the provisions of this chapter. The department shall review each plan and make an express finding to determine whether such plan is consistent or substantially complies with the provisions of this chapter. An electric company that has filed a plan which substantially complies or is consistent with this chapter as determined by the department shall not be required to file a new plan, and the department shall allow such plans previously approved or pending before the department to be implemented. Approval of such previously filed or approved plans shall be deemed to satisfy the requirements contained in section 1G including for the department to conduct an audit of previously incurred costs and find reasonable mitigation of transition costs, and shall allow the department to approve charges for transition costs, provided that the department shall audit, review and reconcile the difference between projected transition costs and actual transition costs by March 1, 2000, and every 18 months, thereafter and provided that such approved plans provide a reduction of 10% for customers choosing the standard service transition rate from the average of undiscounted rates for the sale of electricity in effect during August 1997 or such other date as the department may determine. Each plan shall be designed to implement a restructured electric generation market by March 1, 1998. Each electric company shall offer retail access to all customers as of said date. The department may issue an initial order prior to March 1, 1998, approving any plan filed pursuant to this section subject to further review and reconciliation in order to allow implementation of retail access for all customers after March 1, 1998.

Each restructuring plan shall include, without limitation, the following: an estimate and detailed accounting of total transition costs eligible for recovery pursuant to subsection (b) of section 1G; a description of the company's strategies to mitigate such transition costs; unbundled prices or rates for generation, distribution, transmission, and other services;

proposed charges for the recovery of transition costs; proposed programs to provide universal service for all customers; proposed programs and recovery mechanisms to promote energy conservation and demand-side management; procedures for ensuring direct retail access to all electric generation suppliers; and discussions of the impact of the plan on the company's employees and the communities served by the company.

The department shall review the restructuring plan filed by each electric company and shall issue an order accepting, modifying, or rejecting such plan at the earliest date possible. If the department rejects a restructuring plan, the department shall state the specific reasons for rejection and direct the company to file an alternative plan addressing these objections within 30 days of the department's order rejecting the plan. The department shall review this alternative plan and issue a final order within 60 days of the filing of the revised plan.

(b)(1) If an electric company chooses to divest itself of its existing non-nuclear generation facilities, such electric company shall transfer or separate ownership of generation, transmission, and distribution facilities into independent affiliates of the electric company or functionally separate such facilities within 30 business days of federal approval. The transmission facilities owned by the electric company, including all rights-of-way, property, fiber optic cable, and other tangible or intangible assets used directly or indirectly by the utility in the transmission of electricity, as of December 31, 1996, or acquired thereafter, shall be transferred to a transmission company at a price that shall equal the book value of said transmission facilities on the electric company's accounts net of depreciation as of the date of transfer. The distribution facilities owned by an electric company, including all rights-of-way, property, fiber optic cable, and other tangible or intangible assets used directly or indirectly by the utility in the distribution of electricity, as of December 31, 1996, or acquired thereafter, shall be transferred to a successor distribution company at a price that shall equal the book value of the distribution facilities on the electric company's accounts net of depreciation as of the date of transfer. The newly created distribution companies shall be prohibited from selling electricity at retail, except as provided in sections 1B to 1F, inclusive, and shall be prohibited from directly owning, operating, or controlling transmission facilities, generating facilities, or marketing affiliates, and shall be prohibited from selling, leasing, renting, or otherwise transferring all or a portion of any assets it obtains from the utility pursuant to this section without the expressed approval of the department. In providing such approval, the department shall conduct evidentiary hearings and must issue a finding that such transfers will mitigate to the maximum extent possible the total amount of transition costs of the utility and will minimize the impact of recovery of transition costs on ratepayers in the commonwealth. Except as otherwise provided in this section, an

electric company divesting existing non-nuclear generation facilities shall be in no way disadvantaged by virtue of the fact that it has or plans to divest its existing electricity generating facilities. In the event that an electric company chooses to divest its existing generation facilities, such electric company shall demonstrate to the department that the sale process is equitable and maximizes the value of the existing generation facilities being sold.

(2) For the purposes of this section and sections 1B to 1H, inclusive, the requirement to divest generation facilities shall be deemed satisfied if an electric company divests its non-nuclear generation facilities by (i) selling such non-nuclear facilities in a competitive auction or sale in a process approved by the department which shall ensure complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale; provided, however, that an affiliated company may participate and bid in such competitive auction or sale; or (ii) transferring such non-nuclear generation facilities and purchase power contracts to an affiliated company at a value determined to be reasonable and appropriate by the department including but not limited to a value based on the sale value of comparable plants through prior divestiture actions; provided, however, that in no instance shall such minimum price be lower than the highest price per kilowattage of capacity for any capacity sold in New England, as determined by the department; provided, further, that in the case of the divestiture of any non-nuclear generation facility currently containing only combustion turbine generation capacity of less than 50 megawatts but situated on a site containing free standing retired or unused structures formerly containing steam electric generating units of greater than 200 megawatts capacity, the electric company so divesting shall cause, either through its own efforts prior to said divestiture or through assignment of such obligation to the purchaser of each facility in an agreement approved by the department, said unused structures to be appropriately removed and decommissioned, which may be subject to a re-use plan. The minimum price for the transfer of such assets pursuant to this paragraph shall be determined and approved by the department prior to any such proceeding.

(3) All proceeds from any such divestiture and sale of generation facilities pursuant to paragraphs (1) and (2), net of tax effects and less any other adjustments approved by the department that inure to the benefit of ratepayers, shall be applied to reduce the amount of the selling electric company's transition costs.

(c) If an electric company chooses not to sell its existing non-nuclear generation facilities, then the electric company's recovery of transition costs shall be net of any market value in excess of book value of the non-divested non-nuclear facilities, as determined in this section and in accordance with section 1G, and it shall transfer all of its non-nuclear

generation facilities and purchased power contracts to an affiliate that is a generating company at a price to be determined and approved by the department herein prior to any such proceeding; and in accordance with subsection (b). Such generation company affiliate shall exist separate from and independent of the distribution and transmission operations of such electric company. There shall exist strict separation between such generation affiliate and the distribution and transmission operations of such electric company. Both nuclear and non-nuclear generation facilities and the electric company's purchased power contracts shall be subject to a valuation by the department where such facilities are either sold or assessed by an assessor independent of the electric company or otherwise valued pursuant to the provisions of this chapter, to determine the maximum market value of such assets that could reasonably be realized after an open and competitive sale, and the electric company's recovery of transition costs shall be net of any market value in excess of book value as determined in this section in a competitive market. A generation company formed pursuant to this section shall be prohibited from acquiring new generation facilities as of March 1, 1998. If an electric company chooses not to divest all of its non-nuclear generating facilities, then the electric company's recovery of transition costs shall be net of any market value in excess of book value of the non-divested non-nuclear facilities, as determined in this section and in accordance with section 1G. Such electric company shall not be assessed or charged any costs through its rates established by the department to transfer such generation facilities to an unregulated affiliate or subsidiary or as a consequence of transferring such generation facilities to an unregulated affiliate or subsidiary; provided, however, that should any generation facility so transferred to an unregulated subsidiary be further sold, transferred to, or disposed of, to a third party within 48 months of the generation facility's transfer to an unregulated affiliate or subsidiary of the electric company, then any amount recovered in such a sale, transfer, or disposition in excess of the remaining net book value of the generation facility shall be applied to reduce the amount of the selling electric company's transition costs. Except as otherwise provided in this section, an electric company retaining all or a portion of its existing generation facilities shall be in no way disadvantaged by virtue of the fact that it is so retaining existing generation facilities.

(d) In the event that (i) an electric company with generation facilities in the commonwealth owns, or has an affiliate that owns, generation facilities in another state in the New England region, and (ii) an electric company or its affiliate continues to operate one or more generation facilities in another state in the New England region, then the electric company, should it choose not to divest its existing fossil-fuel fired generation facilities and its existing hydroelectric generation facilities, shall be allowed for purposes of efficiency and local ownership of local generation facilities, to retain any such facilities as set forth in subsection (c);

provided, however, that an electric company not divesting its existing fossil-fuel fired and hydroelectric generation facilities shall not recover through rates, charges, or elsewhere any amount of transition costs associated with the retained existing fossil-fuel fired generation facilities and existing hydroelectric generation facilities. Each reference to existing generation facilities in this section shall include, without limitation, existing generation facilities, regardless of size, and associated property. The department should determine a value for any facilities retained pursuant to this subsection and reduce the amount of the electric company's transition costs by such value in accordance with subsection (b).